



## U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

August 1, 2022

Via ECF

Honorable Ona T. Wang  
United States Magistrate Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *The New York Times Co. et al. v. Federal Bureau of Investigation*,  
22 Civ. 786 (OTW)

Dear Judge Wang:

This Office represents the Federal Bureau of Investigation ("FBI"), the defendant in this action brought by plaintiffs The New York Times Company and Alexa Mills ("Plaintiffs") under the Freedom of Information Act ("FOIA"). I write respectfully to provide the parties' respective positions concerning a proposed briefing schedule for summary judgment in this matter.

As noted in the parties' previous status letters, FBI reviewed the records responsive to the FOIA request at issue in this matter and made a production on May 23, 2022, as well as a supplemental release on June 13, 2022. The only issues that remain in contention are two sets of redactions pursuant to FOIA exemptions 6 and 7(C), 5 U.S.C. § 552(b)(6), (7)(C), which appear in FBI's production on pages marked FBI 22-cv-786-40 and FBI 22-cv-786-56 to -57.

The parties have not been able to agree upon a proposal for a briefing schedule for the parties' cross-motions for summary judgment. While the parties agree that the briefing should proceed at intervals of approximately 30, 30, 14, and 7 days between the parties' briefs, they disagree on when the FBI's initial motion for summary judgment and accompanying brief should be due. Accordingly, we respectfully provide the parties' respective positions below.

**FBI's position:**

In light of (i) existing deadlines for declarations in other FOIA litigations that FBI is handling; (ii) the fact that this matter was reassigned to a different FBI Government Information Specialist during the course of this litigation; and (iii) FBI's need to consult with, and possibly to coordinate on a declaration from, the U.S. Department of the Army, FBI respectfully requests that the Court enter the following proposed schedule:

- **October 28, 2022:** FBI's motion for summary judgment and accompanying brief
- **November 30, 2022:** Plaintiffs' combined brief in opposition and in support of their cross-motion for summary judgment
- **December 14, 2022:** FBI's combined brief in opposition to Plaintiffs' cross-motion and reply in support of its motion

- **December 21, 2022:** Plaintiffs' reply in support of their cross-motion

**Plaintiffs' position:**

Since FBI's supplemental production on June 13, 2022, only a narrow issue remains: whether two sets of redactions have been properly withheld pursuant to Exemptions 6 and 7(C). *See* Dkt. 15. The redacted text is short—not even two full paragraphs—and implicates two FOIA exemptions that involve similar analyses. *See* DOJ v. RCFP, 489 U.S. 749 (1989). In addition, because the parties have been negotiating in good faith over only these redactions for almost two months, the FBI has had time to consult with—and has presumably already consulted with—the relevant stakeholders and develop its justification for nondisclosure, as FOIA requires. *See* Morley v. CIA, 408 F.3d 1108, 1114 (D.C. Cir. 2007) (FOIA imposes a “substantial burden” on the agency to explain why an exemption applies). It thus seems unreasonable for the FBI to seek an additional three months to prepare a brief about this limited set of redactions. The Times respectfully requests that the Court enter the following proposed schedule:

- **August 29, 2022:** FBI's motion for summary judgment and accompanying brief
- **September 30, 2022:** Plaintiffs' combined brief in opposition and in support of their cross-motion for summary judgment
- **October 14, 2022:** FBI's combined brief in opposition to Plaintiffs' cross-motion and reply in support of its motion
- **October 21, 2022:** Plaintiffs' reply in support of their cross-motion

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Thank you for your consideration of this matter.

Respectfully submitted,

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cc: Counsel of record (via ECF)